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Attorney Docket No. P21154

**Mail Stop Appeal Brief-Patents**

In re application of : Steven HILL et al

Application No. : 09/857, 204

Group Art Unit : 1723

Filed : September 18, 2001

Examiner : D.L. Sorkin

For : FLUID MIXING DEVICE

**Mail Stop Appeal Brief-Patents**

Commissioner for Patents  
 U.S. Patent and Trademark Office  
 Customer Service Window, Mail Stop \_\_\_\_\_  
 Randolph Building  
 401 Dulany Street  
 Alexandria, VA 22314

Commissioner for Patents  
 Sir:

Transmitted herewith is an **Appeal Brief Under 37 C.F.R. §41.37** in the above-captioned application.

☐ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ An Information Disclosure Statement, PTO Form 1449, and references cited.

☒ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 37	*37	0	x 9=	\$	x 18=	\$0.00
Indep. Claims: 3	**3	0	X 44=	\$	x 88=	\$0.00
Multiple Dependent Claims Presented			+150=	\$	+300=	\$0.00
Appeal fee				\$		\$0.00
Total:				\$	Total:	\$0.00

☐ Please charge my Deposit Account No. 19-0089 in the amount of \$\_\_\_\_\_.

☒ N/A A Check in the amount of \$\_\_\_\_\_ to cover the filing fee(s) is included.

☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

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*Bruce H. Bernstein*  
 for *Bruce H. Bernstein*  
 Reg. No. 29,027  
*Res No 55915*

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : Steven HILL et al.

Group Art Unit: 1723

Appln. No. : 09/857,204

Examiner: D. L. Sorkin

Filed : September 18, 2001

For : FLUID MIXING DEVICE

**APPEAL BRIEF UNDER 37 C.F.R. §41.37**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Appeal Brief- Patent  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir :

This appeal is from the Examiner's rejection of claims 1-37, as set forth in the Official Action of July 1, 2004.

A Notice of Appeal was filed on October 1, 2004 in response to the Official Action dated July 1, 2004, and an Appeal Brief was filed within the two-month period for response that was set to expire on December 1, 2004. The requisite fee for filing an Appeal Brief under 37 C.F.R. §1.17(c) was paid on April 19, 2004. This complete new Appeal Brief is being filed within one month of a Notification of Non-Compliance with 37 C.F.R. 41.37(c)(1)(v) issued on January 12, 2005.

However, if for any reason the necessary fee is not associated with this file or the attached fee is inadequate, the Commissioner is authorized to charge the fee for the Appeal Brief and any necessary extension of time fees to Deposit Account No. 19-0089.

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**(1) REAL PARTY IN INTEREST**

The real party in interest is Luminis Pty., Ltd., as established by an assignment recorded in the U.S. Patent and Trademark Office on September 18, 2001, at Reel 012178 and Frame 0278.

**(2) RELATED APPEALS AND INTERFERENCES**

No related appeals and/or interferences are pending.

**(3) STATUS OF THE CLAIMS**

Claims 1-37 stand rejected. A copy of claims 1-37 is attached as an Appendix to this brief.

**(4) STATUS OF THE AMENDMENTS**

No amendments to the claims were filed under 37 C.F.R. §1.111 after the Examiner's rejection of the claims of July 1, 2004.

**(5) SUMMARY OF THE CLAIMED SUBJECT MATTER**

Initially, Appellants note that the following descriptions are made with respect to the independent claims and include references to particular parts of the specification. As such, the following are merely exemplary and are not a surrender of other aspects of the present invention that are also enabled by the present specification and that are directed to equivalent structures or methods.

The present invention relates to a fluid mixing device for mixing fluids that may be flowing with variable directions and speeds (Specification, page 1, lines 4-6). For example, the present invention can be used where one fluid is flowing and a second fluid is required to be mixed with the flowing fluid. (Specification, page 1, lines 8-11).

Independent claim 1 requires a fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body and arranged to direct fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber, a fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet (s) being directed through said mixed fluid outlet (s).

In this regard, an exemplary embodiment of the present specification is shown in Figures 1, 2 and 4 and disclosed at page 7, line 2 to page 8, line 16 and at page 9, lines 27-29. The exemplary embodiment discloses a fluid mixing device (1) including a chamber (3), a bluff body (4) defining one end of the chamber (3), a first fluid inlet (5) disposed toward an opposite end of the chamber (3) from said bluff body (4) and arranged to direct fluid toward said bluff body (4), a region substantially surrounding said bluff body (4) including a flow divider (8) defining at least one second fluid inlet (11) to said chamber and at least one mixed fluid outlet (12) from said chamber (3), a fluid flow from said first fluid inlet (5) and/or from said second fluid inlet (11) establishing a recirculating vortex system within said chamber (3) and resulting in a mixture of fluids from said first inlet (5) and said second fluid inlet(s)

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(11) being directed through said mixed fluid outlet(s) (12).

Independent claim 33 requires a fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body and arranged to direct a first fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet configured to provide a second fluid to said chamber and at least one mixed fluid outlet configured to emit a mixture of said first fluid and said second fluid from said chamber while said at least one second fluid inlet provides a second fluid to said chamber, said first and second inlets and said mixed fluid outlet being configured and positioned so that a fluid flow from said first fluid inlet and said at least one second fluid inlet establishes a recirculating vortex system within said chamber that mixes said first fluid and said second fluid.

In this regard, an exemplary embodiment of the present specification is shown in Figures 1, 2 and 4 and disclosed at page 7, line 2 to page 8, line 16 and at page 9, lines 27-29. The exemplary embodiment discloses a fluid mixing device (1) including a chamber (3), a bluff body (4) defining one end of the chamber (3), a first fluid inlet (5) disposed toward an opposite end of the chamber (3) from said bluff body (4) and arranged to direct a first fluid toward said bluff body (4), a region substantially surrounding said bluff body (4) including a flow divider (8) defining at least one second fluid inlet (11) configured to provide a second fluid to said chamber (3) and at least one mixed fluid outlet (12) configured to emit a mixture of said first fluid and said second fluid from said chamber (3) while said at least one second fluid inlet provides a second fluid to said chamber, said first and second inlets (5, 11) and said mixed fluid outlet (12) being configured and positioned so that a fluid flow from said

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first fluid inlet (5) and said at least one second fluid inlet (11) establishes a recirculating vortex system within said chamber (3) that mixes said first fluid and said second fluid.

Independent claim 34 requires a fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body that directs a first fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber that provides a second fluid and at least one mixed fluid outlet from said chamber that emits a mixed fluid, a fluid flow from said first fluid inlet and said at least one second fluid inlet establishing a recirculating vortex system within said chamber and a mixture of fluids from said first fluid inlet and said at least one second fluid inlet being emitted through said mixed fluid outlet.

In this regard, an exemplary embodiment of the present specification is shown in Figures 1, 2 and 4 and disclosed at page 7, line 2 to page 8, line 16 and at page 9, lines 27-29.

The exemplary embodiment discloses a fluid mixing device (1) including a chamber (3), a bluff body (4) defining one end of the chamber (3), a first fluid inlet (5) disposed toward an opposite end of the chamber (3) from said bluff body (4) that directs a first fluid toward said bluff body (4), a region substantially surrounding said bluff body (4) including a flow divider (8) defining at least one second fluid inlet (11) to said chamber (3) that provides a second fluid and at least one mixed fluid outlet (12) from said chamber (3) that emits a mixed fluid, a fluid flow from said first fluid inlet (5) and said at least one second fluid inlet (11) establishing a recirculating vortex system within said chamber (3) and a mixture of fluids from said first fluid inlet (5) and said at least one second fluid inlet (11) being emitted through said mixed fluid outlet (12).

Dependent claim 2 requires that the bluff body includes egress means for releasing fluid from said chamber. Further, claims 3-7 depend from claim 2, and claims 3-4 explicitly further define the egress means. In this regard, an egress means is shown as element 13 in the exemplary embodiment of the specification corresponding to Figures 1-4 and disclosed at page 7, lines 28-29; page 8, lines 13-16. Further, an egress means is shown as element 13 in the exemplary embodiment of the specification corresponding to Figures 5-6 and disclosed at page 8, line 20. Additionally, egress means are variously shown in Figure 12(a) as element 13, Figure 12(b) as element 13; Figure 12(c) as elements 17; Figure 12(d) as element 18; Figure 12(e) as element 13; Figure 12(f) as elements 18; and Figure 12(g) as elements 19. The egress means variously shown in Figures 12(a)-12(f) are disclosed at page 10, lines 4-14.

**(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

(A) Whether Claims 1-32, 34, 35 and 37 are properly rejected under 35 U.S.C. §112, second paragraph and/or 35 U.S.C. §101.

(B) Whether Claims 1, 20-23 and 25-37 are properly rejected under 35 U.S.C. §102(b) as anticipated over PATTERSON et al. (U.S. Patent No. 384,068);

(C) Whether Claim 24 is properly rejected under 35 U.S.C. §103(a) over PATTERSON et al. (U.S. Patent No. 384,068).

(D) Whether Claims 1-9 and 20-37 are properly rejected under 35 U.S.C. §102(b) as anticipated over RYSCHKEWITSCH (U.S. Patent No. 2,044,511).

**(7) ARGUMENT**

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**(A) The Rejection of Claims 1-32, 34, 35 and 37 Under 35 U.S.C. §112, second paragraph and 35 U.S.C. §101 is Improper, and the Decision to Reject Claims 1-32, 34, 35 and 37 on these Grounds Should be Reversed.**

In the Official Action of July 1, 2004, the Examiner rejected claims 1-32, 34, 35 and 37 under 35 U.S.C. §101 and 35 U.S.C. §112, second paragraph. The Examiner cited MPEP 2173.05(p)(ii) and Ex parte Lyell, 17 USPQ2d 1548, 1551 for the proposition that claims that recite “a product... and method steps” should be rejected under 35 U.S.C. §112, second paragraph as ambiguous and under 35 U.S.C. § 101 as nonstatutory because the invention must fall in a single statutory class.

In this regard, claim 2 of the application at issue in Lyell (as reproduced in the decision) recited:

“2. An automatic transmission tool in the form of a workstand and method for using same comprising:

a support means,

and [sic] internally splined sleeve affixed upright to said support means,

a threaded adjustment bolt threadably engaged through a hole in the bottom of said support means and projecting upward through said support frame into said sleeve,

and further comprising the steps of

1. positioning the output end of an automatic transmission onto said upright sleeve,  
2. removing the internal components of said automatic transmission from the casing  
of said transmission,

3. repairing and replacing said internal components back into said casing, and

4. adjusting said internal components for fit and interference by means of adjusting



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said upwardly projecting adjustment bold” (emphasis added). In other words, the above-noted claim that was addressed in LYELL was explicitly directed to an apparatus and a method, and positively claimed components of the apparatus and steps of the method.

In contrast, the claims of the present invention are each directed to only a "fluid mixing device". The "fluid mixing device" is defined by structural and functional characteristics. The Examiner mis-characterizes various of the positively recited characteristics as steps of a method. However, no claim of the present invention recites a method or a "step of" a method. Therefore, the claims of the present application recite an invention falling in only a single statutory class.

In this regard, apparatus and device claims that define a device in part by what the device does have consistently been found patentable, and are not statutorily barred as falling within multiple statutory classes. For example, in In re Ludtke and Sloan, 169 USPQ 563, the U.S. Court of Customs and Patent Appeals found that functional language may be used to define a structure. Appellants submit that the use of functional language to define a structure/apparatus is not only allowed, but is common practice for U.S. practitioners. Accordingly, Appellants respectfully submit that In re Lyell and MPEP 2173.05(p)(ii) do not prohibit claims such as those of the present application.

Accordingly, at least for each and all of the reasons set forth above, Appellants submit that the rejections of claims 1-32, 34, 35 and 37 under 35 U.S.C. §101 and under 35 U.S.C. §112, second paragraph should be reversed.

**(B) The Rejection of Claims 1, 20-23 and 25-37 Under 35 U.S.C. §102(b) as Anticipated over PATTERSON et al. (U.S. Patent No. 384,068) is Improper, and the**

**Decision to Reject Claims 1, 20-23 and 25-37 on this Ground Should be Reversed.**

In the Official Action of July 1, 2004, the Examiner rejected claims 1, 20-23 and 25-37 under 35 U.S.C. §102(b) over U.S. Patent No. 384,068 to PATTERSON. Appellants respectfully submit that the rejection of each of claims 1, 20-23 and 25-37 under 35 U.S.C. §102(b) over PATTERSON is improper and should be reversed. In this regard, Appellants hereinbelow address the rejection of the independent claims under 35 U.S.C. §102(b) over PATTERSON in the numerical order of the claims.

However, Appellants would like to initially explain an error made by the Examiner throughout the prosecution of the present application, the resolution of which will simplify the herein-contained analysis of all of the rejections under 35 U.S.C. §102 and 35 U.S.C. §103. In particular, as should be clear from reading the file history of the present application, including the outstanding Official Action, the Examiner has taken a stance that a reference applied in a §102 rejection need not disclose, either explicitly or inherently, each and every feature recited in a rejected claim. In this regard, with respect to claim 1, Appellants note that the Examiner asserts in the outstanding Official Action at page 4 that "claim 1 additionally includes some discussion of what the claimed device is intended to do to a fluid intended to be used in the device". The Examiner then cites numerous cases (e.g., Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 15 USPQ2d 1525 (Fed. Cir. 1990); Ex parte Thibault, 164 USPQ 666 (Bd. App. 1969)) for the apparent proposition that the rejection of claim 1 under 35 U.S.C. §102 over PATTERSON is proper though PATTERSON does not explicitly disclose or suggest features recited in claim 1.

Further, the Examiner also asserts at page 5 of the Official Action that "[t]he basis for rejection is not that the reference discloses (explicitly, implicitly, or inherently) the method

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step(s)" (emphasis in original). The above-noted admission is not a typographical error, as similar statements are also found with respect to rejections of both claims 1 and 34, over both PATTERSON and RYSCHKEWITSCH, at pages 9, 11 and 16 of the Official Action.

Because a §102 rejection is only proper if the reference applied by the Examiner explicitly or inherently discloses each and every feature recited in the claimed invention, Appellants hereinbelow address the rejection of claims over the references as if the Examiner is asserting that a proper basis exists for the Patent Office to presume that features of the claims are inherent.

**(1) Claim 1**

Claim 1 recites a "fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet (s) being directed through said mixed fluid outlet (s)". Appellants respectfully submit that PATTERSON does not anticipate or suggest at least the above-noted features recited in claim 1, as required for the rejection of claim 1 under 35 U.S.C. §102 to be proper. In this regard, Appellants initially note that at no time during the prosecution of the present application has the Examiner asserted that such features are explicitly disclosed or suggested by PATTERSON.

Further, Appellants respectfully submit that the above-noted features recited in claim 1 are not inherent in PATTERSON. In this regard, Appellants respectfully submit that the Examiner has not satisfied the burden of proof for a rejection based on inherency. In particular, "[u]nder the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." MEHL/Biophile Int'l

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Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305 (Fed. Cir. 1999). However, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (emphasis in original). "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Appellants note that it is the burden of the Examiner to show that the result asserted by the Examiner is the necessary result, and not merely a possible result. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). However, in the above-noted Official Action, the Examiner's only basis for suggesting that the above noted features are presumed to be inherent in PATTERSON, is the Examiner's unsupported and conclusory statement of the existence of an "extreme structural homology".

In this regard, Appellants submit that even the mere provision of the individual structural features similar to those recited in claim 1 (i.e., a chamber, bluff body, first fluid inlet, flow divider, second fluid inlet and mixed fluid outlet), without regard to their arrangement and configuration, would not necessarily result in "a fluid flow from said first

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fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet(s) being directed through said mixed fluid outlet(s)". Rather, a particular arrangement and configuration of the elements of the fluid mixing device is necessary to achieve the recited characteristics of fluid flow. Furthermore, as is explained in the "Background Art" of the present specification at page 1, lines 19-21, flame stability was previously achieved in the background art by the generation of a flow recirculation or a vortex flow pattern either in the wake of a bluff-body or within vortex breakdown associated with strongly swirling flows (i.e., external to the chamber). However, there is no evidence that PATTERSON differs from the deficiencies of the background art described in the present specification.

Additionally, with respect to Hewlett Packard (cited by the Examiner), Appellants note that they are not trying to read unclaimed features into the claims. Rather, just the opposite is true, as the Examiner has effectively ignored features recited in claim 1 by reading such features out of claim 1 throughout the prosecution of the present application. Furthermore, with respect to In re Ludtke and Sloan 169 USPQ 563 (CCPA 1971), Appellants submit that they have no reason to believe that the claimed characteristics are present in the PATTERSON reference; nor has the Examiner provided any sound reason to support an assertion that PATTERSON produces the claimed characteristics recited in claim 1. In this regard, there is little similarity in the structure shown in the figures of the present application (which can result in the claimed characteristics) and the structure shown in PATTERSON. Furthermore, as is noted in the present specification, the "internal flow pattern" of the present invention is "accomplished by distributing the second fluid inlets 11

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and mixed fluid outlets 12 in such a way that they are both subjected to nearly the same external pressure distribution". See page 7, lines 19-24. In contrast, there is no disclosure in PATTERSON of any configuration similar to that shown, by way of example, in the present specification. Accordingly, Appellants respectfully submit that no basis exists for any assertion that the above-noted features recited in claim 1 are inherent in the references applied in the Official Action.

Moreover, it appears that the Examiner has attempted to shift the burden of proof and expects Appellants to prove the negative proposition that PATTERSON does not inherently possess the claimed features. However, without any evidentiary basis, let alone a proper evidentiary basis, for the assertion of inherency, such burden shifting is inappropriate. Further, without specifying the basis for the assertion of inherency, disproving the Examiner's position is an open-ended and unlimited proposition imposed on Appellants. In this regard, Appellants have no notice of, e.g., the specific conditions under which the Examiner believes the references would produce the recited features. Furthermore, because no proper basis in fact or reasoning was provided, Appellants have no specific basis to refute the Examiner's assertion. Accordingly, Appellants respectfully submit that no proper basis has been provided to shift the burden of disproving the Examiner's proposition to the Appellants.

Moreover, with respect to Ex parte Thibault and In re Schreiber 44 U.S.P.Q.2d 1429 (Fed. Cir. 1997), Appellants note that the features recited in claim 1 (and claims 33 and 34) are not merely features of an "intended use". Rather, the above-noted features recited in claim 1 are positively recited characteristics of the elements of the mixing device. Furthermore, although not every feature shown in, e.g., Figures 1, 2 and 4 of, the present

application is claimed, Appellants respectfully submit that the embodiments illustrated in the figures of the present application illustrate an apparatus that possesses the characteristics recited in claim 1. In comparison, as is noted below, the devices shown in the references applied by the Examiner are not similar (e.g., do not have the same "general shape" as in In re Schreiber) to the devices disclosed in the present application. Therefore, there is no reason to believe, nor has the Examiner set forth any reason to believe, that the devices of the references inherently possess the characteristics of the mixing device recited in claim 1.

In other words, the disclosure of the present application describes with particularity how a "recirculating vortex system" is established within a chamber. In this regard, PATTERSON does not describe or suggest a "recirculating vortex system" anywhere, let alone in the combination recited in claim 1. Rather, the diagram of fluid flows of Figure 1 of PATTERSON explicitly show only initial circulation of the liquid fuel and air, but not a recirculating vortex system.

With respect to the functionality of PATTERSON, page 1 lines 61-65 therein describe that "[t]he upper plate, H, is held upon supports J, which rest upon plate F, thereby forming a chamber or generator in which the vaporization of the hydrocarbon is effected and in which combustion takes place". Furthermore, PATTERSON explicitly describes that the combination of fuel and air occurs in the above-noted chamber between the upper plate H and the lower plate F. However, rather than describing a "recirculating vortex system", PATTERSON explicitly describes that "[t]he liquid fuel is held in check as it nears the outer periphery by" air passing through a region between the chamber and an inner periphery of a cylinder G (page 1, lines 81-90). Rather than disclosing the claimed "recirculating vortex system", Appellants respectfully submit that the above-noted disclosure of PATTERSON

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explicitly describes only the combination of air and fuel within a chamber. Accordingly, Appellants respectfully submit that the above-noted features recited in claim 1 are not anticipated (i.e., disclosed or inherent) in PATTERSON.

Appellants additionally note that the "Response to Arguments" in the outstanding Official Action (i.e., point 16 on page 19) states, with respect to an entry for "vortex", that "Turbulent flow is made up of many little vortices". However, based on this, the Examiner then concludes that "there is overwhelming reason to believe that it is capable of being used to achieve the acts applicants have included in the claims, including establishing a vortex".

Appellants respectfully submit that the above-noted conclusion is entirely unsupported. In this regard, the PATTERSON reference does not disclose either a "vortex" or "turbulent flow", so any "equivalence" established between the terms by the NASA glossary is irrelevant to the teachings of PATTERSON. Accordingly, Appellants respectfully submit that the above-noted features of claim 1 are not disclosed or suggested, either expressly or inherently, by PATTERSON.

As hereinafter explained, PATTERSON also fails to disclose structural features of the claimed invention. In particular, not only does PATTERSON not inherently possess the features recited in claim 1 that have been otherwise-ignored by the Examiner, but even the Examiner's stated (albeit improper) basis for ignoring such features (i.e., based on an alleged "extreme structural homology" between structural features) can be shown to be incorrect.

In this regard, PATTERSON does not disclose or suggest a combination of "a first fluid inlet disposed toward an opposite end of the chamber from said bluff body and... a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber", as



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recited in claim 1. Rather, the lower plate F in PATTERSON is tapped at I to form the induction portion through which the liquid fuel passes into the chamber (see page 1, lines 51-54). Thus, the opening at point I in plate F could properly be described, in isolation, as the above-noted first fluid inlet recited in claim 1. Additionally, the only element opposite the point I is the plate "H", such that the plate "H" could properly be described, in isolation, as the above-noted bluff body recited in claim 1.

However, PATTERSON does not disclose or suggest the flow divider recited in claim 1. In particular, the only other inlets to the chamber as defined in PATTERSON are the two inlet ports K defined in the bottom plate F, for admitting a portion of air to the chamber (see page 1, lines 72-75). However, the bottom plate F is not in "a region substantially surrounding said bluff body" (i.e., taking element "H" as the "bluff body"), as recited in claim 1. Accordingly, the two inlet ports K in the bottom plate F are not defined by a flow divider in a region substantially surrounding the bluff body, as would be required if the two inlet ports K were considered to disclose the second fluid inlet(s) recited in claim 1. Furthermore, Figure 1 of PATTERSON does not disclose any other element in "a region substantially surrounding said bluff body" that could be considered "a flow divider defining at least one second fluid inlet to said chamber".

Appellants additionally note the Examiner's arguments at, e.g., 4 of the Official Action dated July 1, 2004, in which the Examiner indicated with respect to the structural limitations recited in claim 1 "for a version of Fig. 1 marked-up by the examiner, see the Response to Arguments section of paper No. 13" (i.e., the previous Final Official Action which was withdrawn following the submission of an Appeal Brief on April 19, 2004). In this regard, at page 11 of paper No. 13 the Examiner imposed artificial delineations onto

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Figure 1 of PATTERSON, in contrast with the direct teachings thereof, in an apparent attempt to modify the apparatus disclosed therein so as to impermissibly obtain the invention recited in claim 1 in hindsight. In this regard, the Examiner asserted (and apparently continues to assert) that the “chamber” in PATTERSON comprises the entire volume below the upper plate H, although PATTERSON describes, at page 1, lines 61-65, that the chamber is formed only between the lower plate F and the upper plate H.

Furthermore, as is noted above, claim 1 recites “a fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber”. In this regard, Figure 4 of the instant specification explicitly shows a recirculating vortex fluid flow within the disclosed chamber. In contrast, PATTERSON does not disclose or suggest anywhere that the fluid flows result in a recirculating vortex. Rather, the fluid flows shown in the burner of Figure 1 in PATTERSON only pass through each particular point in the system once. Moreover, there is no disclosure in PATTERSON that the flows include a “vortex”.

In summary, PATTERSON discloses a chamber between plates F and H, with an inlet at I, inlets at K, and outlets at J. However, PATTERSON does not disclose or suggest the recited “flow divider defining at least one second fluid inlet to said chamber” in “a region substantially surrounding said bluff body. Additionally, PATTERSON does not disclose or suggest “a fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet(s) being directed through said mixed fluid outlet(s)”. Accordingly, at least for each and all of the reasons set forth above, Appellants submit that the rejection of the invention recited in claim 1 should be reversed.

**(2) Claim 33**

Similar to the above-noted features recited in claim 1, claim 33 recites "said first and second inlets and said mixed fluid outlet being configured and positioned so that a fluid flow from said first fluid inlet and said at least one second fluid inlet establishes a recirculating vortex system within said chamber that mixes said first fluid and said second fluid". Appellants respectfully submit that the above-noted features of claim 33 are not disclosed or suggested by PATTERSON, at least for reasons similar to the above-noted reasons for the allowability of claim 1 over PATTERSON. In this regard, in the above-noted Official Action, the Examiner has not asserted a proper basis in fact or reasoning to support the assertion that the above noted features were inherent in PATTERSON (and thus necessarily flowed from the teachings of PATTERSON). Moreover, the Examiner has not provided proper evidence that the above-noted features recited in claim 33 could result from the apparatus disclosed in PATTERSON, let alone that the features would necessarily result. Accordingly, Appellants respectfully submit that the above-noted features recited in claim 33 are not anticipated in PATTERSON.

Appellants additionally assert that PATTERSON does not disclose or suggest a combination that includes "a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet configured to provide a second fluid to said chamber and at least one mixed fluid outlet configured to emit a mixture of said first fluid and said second fluid from said chamber while said at least one second fluid inlet provides a second fluid to said chamber", as is recited in claim 33. In this regard, and as noted above, two inlet ports K are defined in the bottom plate F of PATTERSON. However, the bottom plate F of PATTERSON is not in "a region substantially surrounding said bluff

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body". Accordingly, the two inlet ports K are not the second fluid inlet as recited in claim 33. Furthermore, Figure 1 of PATTERSON does not disclose any other element in "a region substantially surrounding said bluff body" that could reasonably be considered a "flow divider defining at least one second fluid inlet to said chamber". Accordingly, Appellants respectfully submit that PATTERSON does not disclose or suggest the above-noted features recited in claim 33.

Appellants additionally note that claim 33 was added during prosecution to ensure that the Examiner was fully considering the "fluid flow" features that are now asserted to be inherent. In this regard, Appellants added claim 33 to recite "said first and second inlets and said mixed fluid outlet being configured and positioned so that a fluid flow... establishes a recirculating vortex system within said chamber". In this regard, Appellants submit that the "structural" features of claim 33 are inseparable from the "functional" features, such that the functional language defines the structural relationships of the elements recited therein. Accordingly, even if features of claim 1 were properly ignored, Appellants respectfully submit that such features should not be ignored in the combination of claim 33.

Accordingly, at least for each and all of the numerous reasons set forth above, Appellants submit that the rejection of the invention recited in claim 33 should be reversed.

### **(3) Claim 34**

Claim 34 recites "a fluid flow from said first fluid inlet and said at least one second fluid inlet establishing a recirculating vortex system within said chamber and a mixture of fluids from said first fluid inlet and said at least one second fluid inlet being emitted through said mixed fluid outlet". Appellants respectfully submit that the above-noted features of

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claim 34 are not disclosed or suggested by PATTERSON, at least for reasons similar to the above-noted reasons for the allowability of claims 1 and 33 over PATTERSON. Accordingly, Appellants respectfully submit that the above-noted features recited in claim 34 are not anticipated explicitly or inherently in PATTERSON.

Appellants additionally assert that PATTERSON does not disclose or suggest a combination that includes "a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber that provides a second fluid and at least one mixed fluid outlet from said chamber that emits a mixed fluid", as is recited in claim 34, at least for reasons similar to the above-noted reasons for the allowability of claims 1 and 33 over PATTERSON. For example, Figure 1 of PATTERSON does not disclose any element in "a region substantially surrounding said bluff body" that could reasonably be considered a "flow divider defining at least one second fluid inlet to said chamber". Accordingly, Appellants respectfully submit that PATTERSON does not disclose or suggest the above-noted features recited in claim 34.

Accordingly, at least for each and all of the numerous reasons set forth above, Appellants respectfully submit that PATTERSON does not disclose or suggest the invention recited in claim 34.

**(4) Claims 20-23, 25-32 and 35-37**

Appellants additionally submit that claims 20-23, 25-32 and 35-37 are allowable, at least for the reason that these claims depend from claims 1, 33 and 34, respectively, and because these claims recite additional features that further define the present invention. Appellants further submit that claims 20-23, 25-32 and 35-37 are separately patentable over

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PATTERSON, which fails to disclose or render obvious, in the claimed combination, *inter alia*,

- (i) the flow divider protrudes beyond said bluff body (claim 20);
- (ii) wherein the flow divider extends into said chamber (claim 21);
- (iii) wherein said first fluid inlet is spaced toward said bluff body from said opposite end of the chamber (claim 22);
- (iv) wherein the spacing  $h$  of the first fluid inlet from said opposite end satisfies the relationship  $0 < h/L < 1$   
where  $L$  is the distance from the opposite end to the bluff body (claim 23);
- (v) wherein said chamber is formed by a generally cup-shaped body with said bluff body disposed at or adjacent an open end (claim 25);
- (vi) wherein said first fluid inlet is centrally disposed in the base of said cup (claim 26);
- (vii) wherein said flow divider extends between the wall of said cup adjacent the open end and said bluff body (claim 27);
- (viii) wherein said flow divider is fixed to the wall of said cup (claim 28);
- (ix) wherein said mixing device is a burner (claim 29);
- (x) wherein said first fluid inlet supplies combustible fuel and said second fluid inlets supply air to the chamber (claim 30);
- (xi) wherein said combustible fuel is a gaseous fuel (claim 31);
- (xii) wherein said combustible fuel is a gaseous hydrocarbon fuel (claim 32);
- (xiii) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second

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fluid inlet (claim 35);

(xiv) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet (claim 36);

(xv) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet (claim 37).

#### **Claim 21**

For example, the cylinder C in PATTERSON is not a flow divider that "extends into said chamber", as recited in claim 21. Rather, the cylinder C in PATTERSON is provided around the chamber shown in Figure 1 of PATTERSON.

#### **Claim 25**

Moreover, the chamber defined in PATTERSON is not formed "by a generally cup-shaped body", as recited in claim 25. Rather, the chamber defined in PATTERSON is defined between two plates F and H in Figure 1 of PATTERSON.

#### **Claim 27**

Additionally, PATTERSON does not disclose that a "flow divider extends between the wall of said cup adjacent the open end and said bluff body", as recited in claim 27, at least because PATTERSON does not disclose or suggest a cup or a "wall of said cup".

#### **Claim 28**

Furthermore, it logically flows that PATTERSON does not disclose or suggest that a "flow divider is fixed to the wall of said cup", as recited in claim 28. Rather, the cylinder

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C in PATTERSON is provided entirely external to the chamber shown in Figure 1 of PATTERSON.

**Claims 35-37**

Additionally, the fluid entry from the induction port I is not in "substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet", as recited in claims 35-37. Rather, the fluid entry from the ports K is in substantially the same direction as fluid entry from the induction port I in PATTERSON.

Accordingly, for all the above reasons, Appellants submit that the rejection of claims 1, 20-23 and 25-37 under 35 U.S.C. §102(b) is inappropriate and unsupported by PATTERSON et al. Therefore, Appellants respectfully request that the decision of the Examiner to reject claims 1, 20-23 and 25-37 under 35 U.S.C. §102(b) be reversed, and that the application be returned to the Examiner for withdrawal of the rejection over PATTERSON and an early allowance of claims 1, 20-23 and 25-37 on appeal.

**(C) The Rejection of Claim 24 Under 35 U.S.C. §103(a) as Obvious Over PATTERSON et al. is Improper, and the Decision to Reject Claim 24 on this Ground Should be Reversed.**

In the Official Action of July 1, 2004, the Examiner rejected claim 24 under 35 U.S.C. §103(a) over U.S. Patent No. 384,068 to PATTERSON. Appellants respectfully submit that the rejection of claim 24 under 35 U.S.C. §103(a) over PATTERSON is improper and should be reversed. In this regard, claim 24 recites "a fluid mixing device as claimed in claim 23 wherein the ratio  $h/L$  is about 0.4". In this regard, claim 23 recites "[a] fluid mixing device as claimed in claim 22 wherein the spacing  $h$  of the first fluid inlet from said opposite end



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satisfies the relationship  $0 < h/L < 1$

where L is the distance from the opposite end to the bluff body".

Appellants respectfully submit that PATTERSON discloses that the induction port I is formed "through [the] center" of the lower plate F. However, there is no disclosure that the pipe D should extend approximately 60% of the distance from the bottom plate F of the chamber to the top plate H of the chamber. Rather, inspection of Figure 1 in PATTERSON shows that the pipe D ends at the lower plate F, such that a comparable measure of h/L in PATTERSON (i.e., of the ratio of a distance from a first inlet to an opposite end compared to a total distance between the two ends of the chamber) would be approximately 1.

In the outstanding Official Action, the Examiner admits that numerical values are not discussed by the reference. However, the Examiner asserts that the h/L ratio is approximately .6. Appellants submit that such PATTERSON clearly discloses that the inlet does not extend into the chamber, such that the ratio of h/L would be 1.

Furthermore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to have optimized the spacing of the inlet and/or the bluff body, to create a particular air flow. In this regard, the above-noted motivation is not a general motivation provided by PATTERSON; rather, the above-noted motivation is one that is only provided by the Examiner, in an attempt to reconstruct Appellants' invention in hindsight. In any case, as was discussed above at great length, PATTERSON does not disclose any reason why it would be desirable to create, e.g., a "recirculating vortex system within said chamber" (either the chamber explicitly disclosed in PATTERSON or the "chamber" as drawn by the Examiner in the Official Action), or any particular fluid flows that would be optimized by placement of the induction port I at a particular distance from the upper plate H. Therefore,

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for each of the reasons set forth above, Appellants respectfully submit that the rejection of claim 24 under 35 U.S.C. §103(a) over PATTERSON is inappropriate and unsupported by the teachings of PATTERSON. Therefore, Appellants respectfully request that the decision of the Examiner to reject claim 24 under 35 U.S.C. §103(a) be reversed, and that the application be returned to the Examiner for withdrawal of the rejections over PATTERSON and an early allowance of claim 24 on appeal.

**(D) The Rejection of Claims 1-9 and 20-37 Under 35 U.S.C. §102(b) Over RYSCHKEWITSCH (U.S. Patent No. 2,044,511) is Improper, and the Decision to Reject Claims 1-9 and 20-37 on this Ground Should be Reversed.**

In the Official Action of July 1, 2004, the Examiner rejected claims 1-9 and 20-37 under 35 U.S.C. §102(b) over U.S. Patent No. 2,044,511 to RYSCHKEWITSCH. Appellants respectfully submit that the rejection of each of claims 1-9 and 20-37 over RYSCHKEWITSCH is improper and should be reversed. In this regard, Appellants hereinbelow first address the rejection of the independent claims over RYSCHKEWITSCH in the numerical order of the claims.

**(1) Claim 1**

Claim 1 recites a “fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet(s) being directed through said mixed fluid outlet(s)”. In this regard, Appellants respectfully submit that RYSCHKEWITSCH does not anticipate or suggest at least the above-noted features recited

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in claim 1, as required for the rejection of claim 1 under 35 U.S.C. §102(b) over RYSCHKEWITSCH to be proper.

In the outstanding Official Action, the Examiner states at page 11 that “claim 1 additionally includes some discussion of what the claimed device is intended to do to a fluid intended to be used in the device”. However, identical to the rejections over PATTERSON, the Examiner then cites numerous cases (e.g., Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 15 USPQ2d 1525 (Fed. Cir. 1990); Ex parte Thibault, 164 USPQ 666 (Bd. App. 1969)) for the apparent proposition that the rejection of claim 1 under 35 U.S.C. §102 over RYSCHKEWITSCH is proper though RYSCHKEWITSCH does not explicitly disclose or suggest the above-noted feature of claim 1. In this regard, the latest Official Action appears to additionally assert that the claimed properties or function are presumed to be inherent.

Appellants respectfully submit that the above-noted features recited in claim 1 are not inherent. In this regard, Appellants respectfully submit that the Examiner has not satisfied the burden of proof for a rejection based on inherency. Appellants note that it is the burden of the Examiner to show that the result asserted by the Examiner is the necessary result, and not merely a possible result. However, in the above-noted Official Action, the Examiner has not provided any proper basis in fact or reason to support an assertion that the above-noted features necessarily flow from the teachings of RYSCHKEWITSCH. In this regard, there is no evidence that RYSCHKEWITSCH differs from the deficiencies of the background art described in the present specification (i.e., that generate a flow recirculation or a vortex flow pattern either in the wake of a bluff-body or within vortex breakdown associated with strongly swirling flows). Moreover, the Examiner has not provided any evidence that the

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above-noted features recited in claim 1 could result from the apparatus disclosed in RYSCHKEWITSCH, let alone that the above-noted features would necessarily result.

In other words, RYSCHKEWITSCH does not describe or suggest a “recirculating vortex system” anywhere. Rather, RYSCHKEWITSCH discloses, e.g., at page 2, column 1, lines 19-24, only that “the gaseous fuel streaming into the burner through the gas connection 2 draws in a certain amount of air and with the air entering at 11 burns completely in the combustion space lying between the ribs 7 and the inset body 8”. The fluid flow resulting from the above-noted operation of RYSCHKEWITSCH is detailed in Figure 1 with arrows. However, similar to PATTERSON, RYSCHKEWITSCH explicitly shows and describes only initial circulation of fuel and air, but not a recirculating vortex system.

Additionally, claim 1 recites a “bluff body” and “a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber”. In this regard, Appellants respectfully submit that the embodiment of Figures 1 and 2 in RYSCHKEWITSCH discloses a “housing” 1, an “inset body 8” that “can be arranged in the upper portion of the burner mouth”, and “ribs 7”. However, if the “chamber” in RYSCHKEWITSCH is considered the entire space in the housing 1, then the “inset body 8” of RYSCHKEWITSCH is not a “bluff body defining one end of the chamber”. Rather, the “inset body 8” merely defines almost the entire interior space of the “combustion space lying between the ribs 7 and the inset body 8” (see page 2, column 1, lines 19-24). Moreover, if the “chamber” in RYSCHKEWITSCH is considered the entire space in the housing 1, then the “ribs 7” cannot properly be considered a “flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber” recited in claim 1. Rather, the ribs 7 are entirely contained

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within the housing 1 such that a.) an outlet from the space in the housing 1 has to be provided separately from the ribs 7, and b.) an inlet to the space in the housing is provided by only the “openings 10” in the walls 4 (and not by the ribs 7).

Furthermore, if the above-noted “combustion space” in the embodiment of Figures 1 and 2 in RYSCHKEWITSCH (i.e., between the ribs 7 and the inset body 8) is considered the “chamber” recited in claim 1, then only a single inlet for mixed fluids is defined at the lower end of the chamber. Moreover, if the above-noted “combustion space” in RYSCHKEWITSCH is considered the “chamber” recited in claim 1, then a “flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber” is not provided in “a region substantially surrounding said bluff body”, as recited in claim 1.

Additionally, the embodiment of Figures 3 and 4 of RYSCHKEWITSCH discloses the “housing” 1 and “internal components 17” that are “annular and are supported from each other by radial ribs or distance pieces 18”. However, Appellants respectfully submit that the “internal components 17” and “radial ribs or distance pieces” do not disclose “a bluff body defining one end of the chamber”. Rather, the “internal components 17” and “radial ribs or distance pieces 18” are shown throughout most of the space in the “housing” 1.

Furthermore, the “internal components 17” and “radial ribs or distance pieces 18” are not described in detail. In this regard, there is no basis for describing any particular “internal component” or “radial rib” as a “bluff body”, while distinguishing others of the “internal components 17” or “radial ribs or distance pieces 18” as “a flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber” as is recited in claim 1. In this regard, the outstanding Official Action does not provide any

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basis for distinguishing between an alleged "inlet" and "outlet" in RYSCHKEWITSCH, though the Examiner has previously asserted (at page 12 of the Final Official Action issued on August 15, 2003) that "there is good reason to believe that central orifices would be outlets according to the intended operation, while radial outward orifices would be inlets". Accordingly, Appellants do not believe that such "good reason" exists, nor does the Examiner even continue to state a belief that such distinctions (i.e., between an inlet and outlet) can be made in the apparatus in RYSCHKEWITSCH. Rather, the outstanding Official Action merely sets forth the conclusory statement (page 11, lines 6-10), that Ryschkewitsch includes a "flow divider... defining at least one second fluid inlet and at least one mixed fluid outlet", without providing any basis for distinguishing between inlets and outlets in RYSCHKEWITSCH. Accordingly, Appellants respectfully submit that the conclusory assertion of the Examiner can only be taken as an indication that the Examiner is considering the features recited in claim 1 in isolation, such that no weight is being given to the differences of an "inlet" and an "outlet" that are recited in the combination of claim 1.

In any case, Appellants respectfully submit that there is no teaching in RYSCHKEWITSCH that the elements 17 and 18 should be considered the "bluff body" and "flow divider" recited in the combination of claim 1.

Accordingly, Appellants respectfully submit that neither of the embodiments of RYSCHKEWITSCH discloses or suggests the combination of a "chamber", a "bluff body" and a "flow divider" recited in claim 1. Furthermore, Appellants respectfully submit that RYSCHKEWITSCH completely fails to disclose or suggest that a fluid flow from the inlets would establish "a recirculating vortex system within said chamber" as recited in claim 1.

**(2) Claim 33**

Appellants respectfully submit that the features of claim 33 are not disclosed or suggested by RYSCHKEWITSCH, at least for the numerous reasons similar to the above-noted reasons for the allowability of claim 1 over RYSCHKEWITSCH. Additionally, claim 33 was added to recite “at least one mixed fluid outlet configured to emit a mixture of said first fluid and said second fluid from said chamber while said at least one fluid inlet provides a second fluid to said chamber”. In this regard, Appellants respectfully submit that even if the disclosure in Figures 3 and 4 of RYSCHKEWITSCH included features that could be distinguished as an “inlet” and an “outlet”, there is no teaching in RYSCHKEWITSCH that such features would operate as an “inlet” and an “outlet” at the same time in operation (i.e., “while”). Accordingly, in addition to the reasons for patentability set forth above with respect to claim 1, Appellants respectfully submit that claim 33 is not disclosed or suggested by RYSCHKEWITSCH at least because RYSCHKEWITSCH does not disclose a flow divider that defines both an inlet and an outlet in the manner recited in claim 33.

Furthermore, claim 33 recites a “second fluid inlet configured”, “at least one mixed fluid outlet configured”, and “said first and second inlets and said mixed fluid outlet being configured and positioned so that”. In this regard, Appellants respectfully submit that the above-noted language recited in claim 33 was provided to ensure that the Examiner considered the functionality that is necessarily used to define the characteristics of structural relationships of the elements recited in the claim, e.g., an “inlet” and an “outlet”. However, as is noted throughout the present Appeal Brief, Appellants believe that the Examiner is not assigning patentable weight to various of the features recited in the present claims and, rather, has ignored claimed features or assumed, without a proper basis, that claimed features

are inherent.

Accordingly, Appellants respectfully submit that neither of the embodiments of RYSCHKEWITSCH discloses or suggests the combination of a “chamber”, a “bluff body” and a “flow divider” recited in claim 33. Furthermore, Appellants respectfully submit that RYSCHKEWITSCH fails to disclose or suggest that a fluid flow from the inlets would establish “a recirculating vortex system within said chamber” as recited in claim 33.

**(3) Claim 34**

Appellants respectfully submit that the features of claim 34 are not disclosed or suggested by RYSCHKEWITSCH, at least for the numerous reasons similar to the above-noted reasons for the allowability of claim 1 over RYSCHKEWITSCH. Furthermore, claim 34 recites a “at least one second fluid inlet... that provides” and “at least one mixed fluid outlet... that emits”. In this regard, Appellants respectfully submit that the above-noted language recited in claim 34 was provided to ensure that the Examiner did not confuse the features recited in claim 34 with features of “intended use”. However, as is indicated in the “Response to Arguments” at page 18 of the Official Action, the Examiner now appears to agree that the functional features related to fluid flow are limitations of the present claims that must be considered. However, Appellants respectfully submit that the rejections themselves still evidence a clear willingness to ignore such features or to assert, without proper basis, that such features are inherent, despite the clear language recited in claim 34 that is not disclosed or suggested by RYSCHKEWITSCH.

Accordingly, Appellants respectfully submit that neither of the embodiments of RYSCHKEWITSCH discloses or suggests the combination of a “chamber”, a “bluff body”



and a “flow divider” (i.e., “defining at least one second fluid inlet... and at least one mixed fluid outlet”) recited in claim 34. Furthermore, Appellants respectfully submit that RYSCHKEWITSCH fails to disclose or suggest that a fluid flow from the inlets would necessarily establish “a recirculating vortex system within said chamber” as recited in claim 34.

**(4) Claims 2-9, 20-32 and 35-37**

Appellants additionally submit that claims 2-9, 20-32 and 35-37 are allowable, at least for the reason that these claims depend from claims 1, 33 and 34, respectively, and because these claims recite additional features that further define the present invention. Appellants further submit that claims 2-9, 20-32 and 35-37 are separately patentable over RYSCHKEWITSCH, which fails to disclose or render obvious, in the claimed combination, *inter alia*,

(i) wherein said bluff body includes egress means for releasing fluid from said chamber (claim 2);

(ii) wherein said egress means include material porous to said fluids forming at least part of said bluff body (claim 3);

(iii) wherein said egress means include one or more apertures through said bluff body (claim 4);

(iv) wherein said bluff body includes a centrally disposed aperture (claim 5);

(v) wherein said first fluid inlet is directed substantially toward said centrally disposed aperture (claim 6);

(vi) wherein said aperture has a circular cross section (claim 7);

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(vii) wherein said flow divider defines a series of flow channels which form said second fluid inlets and said mixed fluid outlets (claim 8);

(viii) wherein alternate ones of said flow channels spaced around said bluff body respectively form said second fluid inlets and said mixed fluid outlets (claim 9);

(ix) the flow divider protrudes beyond said bluff body (claim 20);

(x) wherein the flow divider extends into said chamber (claim 21);

(xi) wherein said first fluid inlet is spaced toward said bluff body from said opposite end of the chamber (claim 22);

(xii) wherein the spacing  $h$  of the first fluid inlet from said opposite end satisfies the relationship  $0 < h/L < 1$

where  $L$  is the distance from the opposite end to the bluff body (claim 23);

(xiii) wherein the ratio  $h/L$  is about .4 (claim 24);

(xiv) wherein said chamber is formed by a generally cup-shaped body with said bluff body disposed at or adjacent an open end (claim 25);

(xv) wherein said first fluid inlet is centrally disposed in the base of said cup (claim 26);

(xvi) wherein said flow divider extends between the wall of said cup adjacent the open end and said bluff body (claim 27);

(xvii) wherein said flow divider is fixed to the wall of said cup (claim 28);

(xviii) wherein said mixing device is a burner (claim 29);

(xix) wherein said first fluid inlet supplies combustible fuel and said second fluid inlets supply air to the chamber (claim 30);

(xx) wherein said combustible fuel is a gaseous fuel (claim 31);

(xxi) wherein said combustible fuel is a gaseous hydrocarbon fuel (claim 32);

(xxii) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet (claim 35);

(xxiii) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet (claim 36); and

(xxiv) wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet (claim 37).

### **Claims 35-37**

For example, neither of the embodiments in RYSCHKEWITSCH discloses the second fluid inlet as defined in, e.g., claim 1, let alone that a direction of fluid entry to the chamber from the first fluid inlet is substantially opposite a direction of fluid entry to the chamber from the second fluid inlet, as recited in claim 35 (and similarly recited in claims 36 and 37). Rather, each embodiment in RYSCHKEWITSCH only discloses an upward fluid flow of both the fuel and the air to the combustion space, and the embodiment of Figure 1 also discloses a lateral entry of air into the housing 1 through openings 7. However, neither embodiment discloses or suggests entry of fluid downward in opposition to the fluid entry from the "nozzles 3".

### **Claim 3**

Furthermore, there is no disclosure in RYSCHKEWITSCH that any material is

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“porous to said fluids”, as is recited in claim 3. Rather, even if the “inset body 8” were considered to disclose the “bluff body” recited in the claims, RYSCHKEWITSCH does not disclose or suggest any particular material for the “inset body” that would be considered “porous to said fluids”.

### **Claim 9**

Moreover, there is no basis for distinguishing the openings in Figure 4 of RYSCHKEWITSCH as inlets or outlets, let alone that “alternate ones of said flow channels... respectively form said second fluid inlets and said mixed fluid outlets” as recited in claim 9. In this regard, Appellants submit that it appears that the numerous annular internal components 17 of Figure 4 would not operate alternately as second fluid inlets and mixed fluid outlets without significant modifications to the burner in RYSCHKEWITSCH.

Accordingly, for all the above reasons, Appellants submit that the rejection of claims 1-9 and 20-37 under 35 U.S.C. §102(b) is inappropriate and unsupported by RYSCHKEWITSCH. Therefore, Appellants respectfully request that the decision of the Examiner to reject claims 1-9 and 20-37 under 35 U.S.C. §102(b) be reversed, and that the application be returned to the Examiner for withdrawal of the rejection over RYSCHKEWITSCH and an early allowance of claims 1-9 and 20-37 on appeal.

### **(8) CONCLUSION**

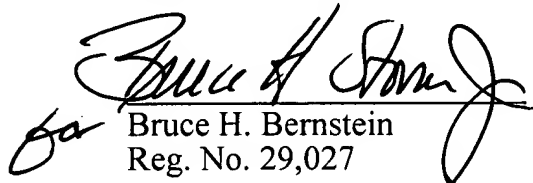
Appellants respectfully submit that each and every pending claim of the present application meets the requirements for patentability under 35 U.S.C. §101, 35 U.S.C. §102, 35 U.S.C. §103 and 35 U.S.C. §112, second paragraph, and that the present application and each pending claim are allowable over the prior art of record.

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Should there be any questions, any representative of the U.S. Patent and Trademark Office is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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**CLAIMS APPENDIX**

1. (Original) A fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body and arranged to direct fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber and at least one mixed fluid outlet from said chamber, a fluid flow from said first fluid inlet and/or from said second fluid inlet establishing a recirculating vortex system within said chamber and resulting in a mixture of fluids from said first fluid inlet and said second fluid inlet (s) being directed through said mixed fluid outlet (s).

2. (Original) A fluid mixing device as claimed in claim 1 wherein said bluff body includes egress means for releasing fluid from said chamber.

3. (Original) A fluid mixing device as claimed in claim 2 wherein said egress means include material porous to said fluids forming at least part of said bluff body.

4. (Original) A fluid mixing device as claimed in claim 2 wherein said egress means include one or more apertures through said bluff body.

5. (Original) A fluid mixing device as claimed in claim 4 wherein said bluff body includes a centrally disposed aperture.

6. (Previously Presented) A fluid mixing device as claimed in claim 5 wherein said first fluid inlet is directed substantially toward said centrally disposed aperture.

7. (Original) A fluid mixing device as claimed in claim 6 wherein said aperture has a circular cross section.

8. (Previously Presented) A fluid mixing device as claimed claim 1 wherein said flow divider defines a series of flow channels which form said second fluid inlets and said

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mixed fluid outlets.

9. (Original) A fluid mixing device as claimed in claim 8 wherein alternate ones of said flow channels spaced around said bluff body respectively form said second fluid inlets and said mixed fluid outlets.

10. (Original) A fluid mixing device as claimed in claim 9 wherein said flow divider has a corrugated profile so as to repeatedly cross said region surrounding the bluff body.

11. (Previously Presented) A fluid mixing device as claimed in claim 10 wherein said chamber includes an outer wall extending substantially around the perimeter of said region surrounding the bluff body.

12. (Original) A fluid mixing device as claimed in claim 11 wherein said corrugated profile alternately contacts the bluff body and said outer wall.

13. (Previously Presented) A fluid mixing device as claimed in claim 12, wherein the geometric center of a cross-section of each of the flow channels defined by said corrugated profile is substantially equidistant from the bluff body and from the outer wall.

14. (Previously Presented) A fluid mixing device as claimed in claim 12, wherein the geometric centers of the cross-section of each of the flow channels defined by said corrugated profile are alternately substantially closer to the outer wall and substantially closer to the bluff body.

15. (Previously Presented) A fluid mixing device as claimed in claim 14 wherein the flow channels having cross-sections with geometric centers substantially closer to the outer wall form said second fluid inlets and the flow channels having cross-sections with geometric centers substantially closer to the bluff body form said mixed fluid outlets.

16. (Previously Presented) A fluid mixing device as claimed in claim 10 wherein said

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corrugated profile is of triangular form so that said flow channels are generally triangular in cross section.

17. (Original) A fluid mixing device as claimed in claim 16 wherein at least alternate flow channels have substantially the same cross section size.

18. (Original) A fluid mixing device as claimed in claim 17 wherein said corrugated profile defines eight flow channels forming second fluid inlets each alternately interposed with eight flow channels forming mixed fluid outlets.

19. (Original) A fluid mixing device as claimed in claim 18 wherein the mixing device has eight-fold azimuthal symmetry about a longitudinal axis.

20. (Previously Presented) A fluid mixing device as claimed in claim 1 wherein the flow divider protrudes beyond said bluff body.

21. (Previously Presented) A fluid mixing device as claimed in claim 1 wherein the flow divider extends into said chamber.

22. (Previously Presented) A fluid mixing device as claimed in claim 1 wherein said first fluid inlet is spaced toward said bluff body from said opposite end of the chamber.

23. (Previously Presented) A fluid mixing device as claimed in claim 22 wherein the spacing  $h$  of the first fluid inlet from said opposite end satisfies the relationship  $0 < h/L < 1$  where  $L$  is the distance from the opposite end to the bluff body.

24. (Original) A fluid mixing device as claimed in claim 23 wherein the ratio  $h/L$  is about 0.4.

25. (Previously Presented) A fluid mixing device as claimed in claim 1 wherein said chamber is formed by a generally cup-shaped body with said bluff body disposed at or adjacent an open end.



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26. (Original) A fluid mixing device as claimed in claim 25 wherein said first fluid inlet is centrally disposed in the base of said cup.

27. (Previously Presented) A fluid mixing device as claimed in claim 25 wherein said flow divider extends between the wall of said cup adjacent the open end and said bluff body.

28. (Original) A fluid mixing device as claimed in claim 27 wherein said flow divider is fixed to the wall of said cup.

29. (Previously Presented) A fluid mixing device as claimed in claim 1 wherein said mixing device is a burner.

30. (Original) A fluid mixing device as claimed in claim 29 wherein said first fluid inlet supplies combustible fuel and said second fluid inlets supply air to the chamber.

31. (Original) A fluid mixing device as claimed in claim 30 wherein said combustible fuel is a gaseous fuel.

32. (Original) A fluid mixing device as claimed in claim 30 wherein said combustible fuel is a gaseous hydrocarbon fuel.

33. (Previously Presented) A fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body and arranged to direct a first fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet configured to provide a second fluid to said chamber and at least one mixed fluid outlet configured to emit a mixture of said first fluid and said second fluid from said chamber while said at least one second fluid inlet provides a second fluid to said chamber, said first and second inlets and said mixed fluid outlet being configured and positioned so that a fluid flow from said first fluid inlet and said at least one second fluid inlet establishes

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a recirculating vortex system within said chamber that mixes said first fluid and said second fluid.

34. (Previously Presented) A fluid mixing device including a chamber, a bluff body defining one end of the chamber, a first fluid inlet disposed toward an opposite end of the chamber from said bluff body that directs a first fluid toward said bluff body, a region substantially surrounding said bluff body including a flow divider defining at least one second fluid inlet to said chamber that provides a second fluid and at least one mixed fluid outlet from said chamber that emits a mixed fluid, a fluid flow from said first fluid inlet and said at least one second fluid inlet establishing a recirculating vortex system within said chamber and a mixture of fluids from said first fluid inlet and said at least one second fluid inlet being emitted through said mixed fluid outlet.

35. (Previously Presented) The fluid mixing device of claim 1, wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet.

36. (Previously Presented) The fluid mixing device of claim 33, wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet.

37. (Previously Presented) The fluid mixing device of claim 34, wherein a direction of fluid entry to said chamber from said first fluid inlet is substantially opposite a direction of fluid entry to said chamber from said at least one second fluid inlet.